



Volume 1, Number 1

ABOUT Enforcement Alert

The Enforcement Alert is published periodically by EPA's Office of Regulatory Enforcement. It informs and educates the public and regulated community of important environmental enforcement issues, recent trends and significant enforcement actions.

This information should help the regulated community anticipate and prevent violations of federal environmental law that could otherwise lead to enforcement action.

See Page 2 for useful EPA Websites and additional resources.

Eric V. Schaeffer
Director, Office of
Regulatory Enforcement

United States
Environmental Protection
Agency

Office of Enforcement and
Compliance Assurance
(2201A)

EPA 300-N-98-004
August 1998

Enforcement Alert

Office of Regulatory Enforcement

August 1998

Pesticide Labels Must Warn Workers of Health Risks

DuPont Penalized for Violating Worker Protection Standard rule

Federal law requires that pesticide labels must warn workers of risks and protections that must be taken when applying the product.

In a landmark decision issued April 30, 1998, an Environmental Protection Agency judge imposed the largest administrative penalty in the Agency's history against E.I. DuPont de Nemours & Co. ("DuPont") for violating these requirements.

EPA Administrative Law Judge Edward J. Kuhlmann ordered DuPont to pay \$1.89 million for ignoring EPA orders to stop shipping pesticides with labels that omitted protective eyewear warnings required by the Worker Protection Standard rule ("WPS rule"). The WPS rule was enacted under the Federal Insecticide, Fungicide and Rodenticide Act ("FIFRA") in August 1992 to reduce the number of pesticide-related illnesses and injuries to agricultural workers from on the job pesticide exposures. In publishing the rule, the Agency determined that protective eyewear and other simple safety measures would "reduce substantially the number of pesticide-related illnesses and injuries to agricultural employees."

In the complaint filed in October 1994, EPA alleged that DuPont sold and distributed Bladex and Extrazine herbicides without the protective eyewear label warnings required by the WPS rule. The complaint charged that DuPont sold these misbranded herbicides on 379 occasions after receiving a written Notice of Serious Error, which stated in bold upper case letters that DuPont **"MUST NOT SELL OR DIS-TRIBUTE"** the products. Based on

WHAT THE LAW REQUIRES:

Section 12(a)(1)(E) of the Federal Insecticide, Fungicide, Rodenticide Act, 7 U.S.C. §136j, prohibits the sale or distribution of misbranded pesticides.

FIFRA §2(q)(1)(G) defines a pesticide as misbranded "if the does not contain a warning or a caution statement which may be necessary and if complied with... is adequate to protect health and the environment."

The Worker Protection Standard rule, 57 Fed. Reg. 38102 (1992) (codified at 40 C.F.R., Parts 156 and 170) stipulates that protective eyewear and other early entry personal protective equipment are necessary to lessen "unreasonable risks" to agricultural workers from on the job pesticide exposures.

cost and pricing information obtained from DuPont following the court order, EPA calculated that the company's made more than \$9.4 million from sales of the misbranded pesticides.

In his decision, Judge Kuhlmann found

DuPont liable for all 379 violations alleged by EPA. In assessing the maximum penalty allowable under federal law, the Judge found that "Respondent's knowing violation of an agency order demonstrates a failure to exercise due care." "[DuPont's] culpability is established by its decision not to cease shipments of the Bladex and Extrazine products in April 1994 despite its receipt of the Notices of Serious Error on March 16 and 22, 1994."

Kuhlmann found that DuPont's actions created the potential for serious

continued on Page 2

Enforcement Alert

harm to human health and the environment, stating that “[a]ctions like those taken by Respondent in this case -- shipping pesticides with labels found by the Agency to contain serious errors after being expressly told not to do so -- interfere with the Agency’s ability to carry out its statutory mandate to protect human health and the environment and thus present a clear threat to the FIFRA regulatory scheme.” DuPont’s actions “created the potential for serious or widespread harm to human health and the environment by preventing achievement of the basic goals of the WPS and FIFRA,” Kuhlmann added.

In addition to the record penalty, this was the first case to be tried under the WPS rule. When publishing the rule, EPA estimated that tens of thousands of agricultural workers were experiencing acute illness and injuries each year as the result of occupational exposures to pesticides. The Agency estimates that more than 3.5 million farmworkers and other pesticide handlers should be receiving protection today because of the WPS rule.

CASE HIGHLIGHTS:

- This is the first court decision involving the new FIFRA Worker Protection Standard rule.

- Citing *Johnson-Pacific* and *Sav-Mart*, Judge Kuhlmann noted in his decision that FIFRA penalties are designed to “deter future violations” and that such deterrence includes “recovery of economic benefit” to take “away the economic incentive to violate the law.”
- Judge Kuhlmann concluded that DuPont’s defiance of EPA orders, the harm to the EPA’s regulatory program and the \$9.4 million profit enjoyed by DuPont were reasonable bases for his sweeping decision.

*For more information contact:
Mark Garvey, (202) 564-4168 or
Robert Darnell, (202) 564-4176.*

EPA’s Audit Policy

EPA’s Audit Policy reduces and, in some cases, eliminates penalties for companies that voluntarily disclose and correct violations of federal law. For more information about the Audit Policy, see EPA’s Audit Policy Website at: <http://www.epa.gov/oeca/auditpol.html>.

*Editor: Virginia Bueno, (202) 564-8684.
bueno.virginia@epamail.epa.gov.
Layout & design: Sarah Weaver,
weaver.sarah@epamail.epa.gov.*

Useful Websites

EPA HOMEPAGE
<http://www.epa.gov/epahome>

OFFICE OF ENFORCEMENT AND COMPLIANCE ASSURANCE (OECA)
<http://www.epa.gov/oeca/index.html>

OFFICE OF REGULATORY ENFORCEMENT (ORE)
<http://www.epa.gov/oeca/ore.html>

ORE’S OFFICE OF TOXICS & PESTICIDES ENFORCEMENT DIVISION
<http://www.epa.gov/oeca/ore/tped/>

OFFICE OF PESTICIDES, PREVENTION AND TOXIC SUBSTANCES (OPPT)
<http://www.epa.gov/internet/oppts/>

OPPT’S OFFICE OF PESTICIDE PROGRAMS
<http://www.epa.gov/pesticides/>

OPPT’S PESTICIDE APPLICATOR AND WORKER SAFETY HOMEPAGE: http://www.epa.gov/oppfead1/work_saf/

NATIONAL AGRICULTURE COMPLIANCE ASSISTANCE CENTER
<http://www.ine.gov/oeca/aghmpg.html>

NATIONAL CENTER FOR ENVIRONMENTAL PUBLICATIONS AND INFORMATION (NCEPI) CATALOG:
<http://www.epa.gov/ncepihom/catalog.html>

Enforcement Alert



United States
Environmental Protection Agency
2201A
Washington, D.C. 20460

Official Business
Penalty for Private Use \$300

Bulk Rate
Postage and Fees Paid
EPA
Permit No. G-35

